

United States District Court

District
OF MASSACHUSETTS IN WORCESTERName
EDWARD TAVARES JRPrisoner No.
W-43443Case No. FDS
U.S. 2004-CV-40059

Place of Confinement

N.C.C.I. GARDNER P.O. BOX 466,500 COLONY RD.
GARDNER MASS. 01440

Name of Petitioner (include name under which convicted)

EDWARD TAVARES JR

Name of Respondent (authorized person having custody of petitioner)

V. STEVEN O'BRIEN SUPERINTNEDENT
OF N.C.C.I. GARDNER..

The Attorney General of the State of:

THOMAS REILLY A.G.

PETITION

1. Name and location of court which entered the judgment of conviction under attack BRISTOL COUNTY
SUPERIOR COURT ,446 COUNTY STREET, NEW BEDFORD MASS. 02740
2. Date of judgment of conviction MARCH 31/1987 credit one year awaiting trial
3. Length of sentence INTENT TO KILL & to 10 YEARS INDICTMENT 12806; Aggravated
RAPE 15 to LIFE INDICTMENT 13504; AND ASSAULT AND BATTERY
FILED INDICTMENT 12805:
4. Nature of offense involved (all counts) AGGRAVATED RAPE : INTENT TO KILL : AND ASSAULT
AND BATTERY.
5. What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:
6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
7. Did you testify at the trial?
Yes ☐ No ☒
8. Did you appeal from the judgment of conviction?
Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court
- (b) Result Affirmed Conviction
- (c) Date of result and citation, if known COMMONWEALTH V.TAVARES 27 Mass.app.ct.637(1989).
- (d) Grounds raised Four (4) issues of prosecutorial Misconduct.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court UNKNOWN C.P.C.S.DIRECT APPEAL ATTORNEY CAROL Z.ROOTS,
WITHDRAW PRIOR TO ANY DECISION FROM.SUPREME JUDICIAL COURT
- (2) Result UNKNOWN

(3) Date of result and citation, if known UNKNOWN

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court NO

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court New Bedford Superior Cour(trial court)
- (2) Nature of proceeding Motion for New Trial Mass.R.Crim.P.30(b)
- (3) Grounds raised In effective assistance of counsel at trial and appellate counsel on appeal; 1) issue, The defense counsel's broken promise to the jury in his opening statement, that he would produce Alibi

witnesses which he failed to produce at trial: 2) issue failure of the trial judge to recuse himself from this case.

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result Motion hearing was held on September 14/1992, before (J. Sheehan)

(6) Date of result Dec. 21/1992, Trial (J. Sheehan denied New Trial Motion.

(b) As to any second petition, application or motion give the same information:

(1) Name of court New Bedford Superior court under Civil No, 2003-01325-C

(2) Nature of proceeding Petition for Judicial Review, G.L.c. 6178C thru 6178P
:Also 42 U.S.C. 1983 Violation;

(3) Grounds raised Failure of the trial judge prior to sentence in criminal sentence of defendant under 12805, 12806 and 13504, failure to send defendant prior of life sentence for 60 Day observation, under G.L. c. 12314 and 5; Failure to establish prior to sentencing of life sentence, to if the defendant is sexual dangerousness person. Sentenced is unconstitutionally imposed, subject the defendant to EX POST FACTO PUNISHMENT.

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result DEFAULT JUDGEMENT ENTERED AGAINST ALL DEFENDANT'S

(6) Date of result June 22/2004

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

- (1) First petition, etc. Yes ☒ No ☐
(2) Second petition, etc. Yes ☐ No ☒

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
EDWARD TAVARES JR V. SEX OFFENDER REGISTRY: DEPT. OF CORR. et al:

MASS. PAROLE BOARD, AND ATTORNEY GENERAL et al.. PURSUANT TO (2)
SECOND PETITION, PURSUANT TO BRISTOL COUNTY CIVIL NO. 2003-01325-C
IS STILL PENDING, BECAUSE EDWARD TAVARES JR. FILED MOTION TO AMEND
PETITION. WHICH HAS (NO SAME ISSUE) AS IN U.S. DISTRICT COURT.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

- A. Ground one: Mr. Tavares 'Constitutional rights were violated because he was denied effective assistance of trial counsel.

Supporting FACTS (state *briefly* without citing cases or law) 1)The defense counsel's broken promise to the Jury in his opening statement that he would produce Alibi Witnesses which he failed to produce at trial;2)The defendant was denied his constitutional right to effective assistance of counsel because his trial counsel not only failed to object and exclude hearsay testimony regarding lost evidence, but also stressed inadmissible testimony during cross examination ;3)Defense counsel's failure to seek independent examinations and forensic testing which may have contained exculpatory evidence constitutes ineffective assistance of counsel;4)Defense Counsel's failure to exclude evidence that was lost, testimony and his failure to file any motion regarding the issue and failure to seek sanctions deprived the defendant of effective assistance of counsel.

- B. Ground two: Appellate counsel failed to raise appellate issues denying Mr. Tavares of effective assistance of counsel.

Supporting FACTS (state *briefly* without citing cases or law) Mr. Tavares denied effective assistance counsel at trial or appeal, because the ineffective assistance of trial counsel and appellate counsel resulted in a substantial risk of a miscarriage of justice.

- C. Ground three: The trial Judge should have recused himself from the defendant trial.

Supporting FACTS (state *briefly* without citing cases or law) The trial judge should have recused himself because he had represented the defendant in a previous two sex sexual assault Conviction ,one which was his secretary daugther ,As a result of the trial Judge's prior involvement with Mr.Tavares ,a substantial risk of a miscarriage of justice occurred: 2) The trial judge's denied of the Motion for new trial without any detailed finding was insufficient to indicate he weighed the appropriate factors involved in a potential conflict of issue.

- D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing APPOINTED C.P.C.S. ALAN ZWIRBLIS

LOCAL OFFICE 4 TH FLOOR, 47 N. SECOND ST. NEW BEDFORD MA. 02740-6205

(b) At arraignment and plea ALAN ZWIRBLIS C.P.C.S. APPOINTED ,LOCAL OFFICE
4TH FLOOR , 47 N. SECOND ST. NEW BEDFORD MASS. 02740-6205

(c) At trial ROBERT GEORGE APPOINTED BY C.P.C.S. ADDRESS NOW UNKNOWN

(d) At sentencing APPOINTED C.P.C.S. ROBERT GEORGE

(e) On appeal DIRECT APPEAL COUNSEL CAROL Z. ROOTS, C.P.C.S. APPOINTED

(f) In any post-conviction proceeding JENNIFER APPELYARD C.P.C.S. APPOINTED

LAST KNOWN ADDRESS P.O. BOX 50 BOSTON MASS. 02117

(g) On appeal from any adverse ruling in a post-conviction proceeding JENNIFER APPELYARD
APPOINTED C.P.C.S. , LAST KNOWN ADDRESS P.O. BOX 50, BOSTON MASS. 02117

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

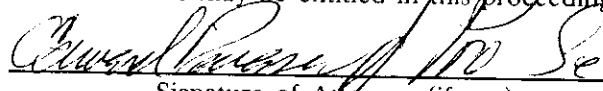
(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?


Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

September 19/2004
(date)


Signature of Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD TAVARES, JR.
Petitioner,

v.

COMMONWEALTH OF
MASSACHUSETTS et al,
Respondent(s).

Civil Action No.
04-40059-EDS

ORDER

SAYLOR, J.

On April 26, 2004, Edward Tavares, Jr. filed a 37-page petition for writ of habeas corpus pursuant to 28 U.S.C. §§ 2254 and 2255.¹ Thereafter, on May 18, Steven O'Brien, superintendent of the institution where Tavares is incarcerated, filed a motion to require Tavares to submit a petition in compliance with Rule 2(c) of the Rules Governing Habeas Corpus Cases Under Section 2254 in the United States District Courts. That motion is GRANTED. Tavares shall file an amended petition that complies in all respects with Rule 2(c). A copy of Rule 2(c) and a blank copy of the requisite form is attached hereto.

Moreover, in his petition, Tavares mistakenly named the "Commonwealth of Massachusetts et al" as the respondent(s).² Pursuant to Rule 2(a) of the Rules Governing Habeas

¹ In his petition, Tavares challenges his state court conviction and sentence on the grounds that he was denied ineffective assistance of counsel. Because he does not appear to be challenging a sentence imposed by this Court, 28 U.S.C. § 2255 is not applicable.

² Aside from a reference to "Paul Walsh D.A." on the civil cover sheet in this matter, it is unclear from Tavares' pleadings to whom the "et al" refers.

Corpus Cases Under Section 2254, the amended petition shall name Steven O'Brien (or such other superintendent as may be appropriate at the time of filing), as respondent.

So Ordered.

A handwritten signature in black ink, appearing to read "F. Dennis Saylor", written over a horizontal line.

F. Dennis Saylor
United States District Judge

Dated: September 7, 2004

MR.DANIEL I.SMULOW,ESQ A.A.G.
ONE ASHBURTON PLACE
BOSTON MASS.02108

SEPTEMBER 17 2004

MR.EDWARD TAVARES JR
N.C.C.I.GARDNER
P.O.BOX 466
500 COLONY RD.
GARDNER MASS.

IN RE: EDWARD TAVARES JR.V.STEVEN O'BRIEN
U.S.NO.2004-CV-40059-FDS

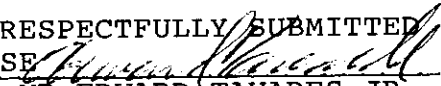
Dear Mr.Smulow;

Please find enclosed as stated in the following..

- 1)CERTIFICATE OF SERVICE
- 2)PETITIONER FOR COMPLETED PURSUANT TO RULE 2(c) AMEND,
AND EXH-A COURT ORDER.


I thank you for your time in this matter.

C/C:MARTIN CASTLES,CLERK
E/T/Files

RESPECTFULLY SUBMITTED
pro-SE 
MR.EDWARD TAVARES JR
P.O.BOX 466
GARDNER MASS.01440

CERTIFICATE OF SERVICE

I Edward Tavares Jr.Certify that I have served the
above said attached herewith,upon the defendant Steven O'Brien
attorney Daniel I.Smulow A.A.G.at One Ashbuton Place ,Boston Mass
02108,sent by first class mail postage prepaid on this 19 day
of Setpember 2004:SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY:


MR.EDWARD TAVARES JR
P.O.BOX 466
GARDNER MASS.01440

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD TAVARES JR
(PLAINTIFF)

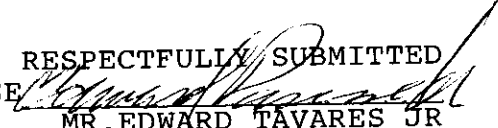
U.S.DISTRICT COURT
CIVIL ACTION NO. 2004-40059-FDS

V.

DEPARTMENT OF CORRECTION
STEVEN O'BRIEN ,SUPERINTENDENT
OF N.C.C.I.GARDNER STATE PRISON
(RESPONDENT)

CERTIFICATE OF SERVICE

I Edward Tavares the pro-se petitioner in the above entitled matter, has served upon the United States District Court of District of Massachusetts and in Worcester Division sent by first class mail postage prepaid by the petitioner, Petitioner Certificate of Service for the amend Rule 2(c), as order by the court, and exh-A, also Cover letter to defendant attorney Daniel I Smulow Esq, with attached above said thereto., all was sent on this 17 day of September 2004; to Martin Castles, at 595 Main St, Fifth Floor, Worcester Mass. 01608. All the above said is true and signed under the pains and penalties of perjury;

RESPECTFULLY SUBMITTED
PRO-SE 
MR. EDWARD TAVARES JR
P.O. BOX 466
GARDNER MASS. 01440